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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 **JESSE AVILA,**

15 Plaintiff,

16 v.

17 **JEANNE WOODFORD, et al.,**

18 Defendants.
19

C 07-0143 CW (PR)

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS**

20 TO PLAINTIFF JESSE AVILA, PRO SE:

21 PLEASE TAKE NOTICE that Defendant J. Woodford hereby moves this Court to dismiss
22 Plaintiff Jesse Avila's complaint under Federal Rule of Civil Procedure 12(b)(6). Plaintiff's
23 complaint fails to allege facts that show Defendant was deliberately indifferent to Plaintiff's
24 safety.

25 **INTRODUCTION**

26 Plaintiff has filed this lawsuit under 42 U.S.C. § 1983 alleging Defendant was deliberately
27 indifferent to his safety simply because he may be required to report to a parole office where
28 former gang members may be present and want to hurt him. Although he cites no specific parole

Def.'s Not. Mot. & Mot. Dismiss

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1 terms or incidents where he observed his former gang members at the parole office, Plaintiff
 2 contends that because he may have contact with them, his constitutional rights have been
 3 violated. Despite Plaintiff's vague allegations, he has failed to allege how Defendant was aware
 4 that Plaintiff was at risk of danger or how Defendant disregarded the risk to Plaintiff's detriment.
 5 Even if the Court were to determine that Plaintiff had stated a claim against Defendant,
 6 Defendant is entitled to qualified immunity because she would not have known that her actions
 7 were unlawful.

8 STATEMENT OF THE ISSUES

9 1. To state a claim for a constitutional violation, a plaintiff must set forth facts connecting
 10 each defendant to the loss the plaintiff claims to have suffered. May Plaintiff hold Defendant
 11 liable for claims of deliberate indifference to safety without showing that she acted personally
 12 against him?

13 MEMORANDUM OF POINTS AND AUTHORITIES

14 STATEMENT OF THE CASE

15 On January 9, 2007, Plaintiff, a California state prisoner, filed his unverified complaint, pro
 16 se under 42 U.S.C. § 1983 against prison officials at California State Prison - San Quentin (San
 17 Quentin) and against officials at the California Department of Corrections and Rehabilitation
 18 (CDCR). In his complaint, Plaintiff alleges that his rights under the Eighth Amendment were
 19 violated because Defendant was deliberately indifferent to his safety by not taking measures to
 20 guarantee his safety. (Compl.) On July 25, 2007, the Court allowed Plaintiff to proceed with a §
 21 1983 claim for deliberate indifference to safety and ordered service on Defendant Woodford.
 22 (Order of Service at 2.) At this point, only Defendant Woodford, the retired Secretary of CDCR,
 23 has been served. The Court directed Defendant to file a dispositive motion no later than May 30,
 24 2008. (Order.)

25 STATEMENT OF FACTS

26 Plaintiff is a former gang member of the Nuestra Raza gang. (Compl. at 5.) Plaintiff
 27 contends that after he dropped out of the gang, he provided information and testimony to the
 28 authorities about crimes his former gang committed. (*Id.*) Plaintiff alleges that this resulted in

1 the conviction of several of his former gang members. (*Id.*) Plaintiff claims that because of this
 2 active gang members want to harm him. (*Id.* at 2.) Plaintiff contends that as a condition of his
 3 parole, he will be forced to report to his parole agent's office, where he alleges active gang
 4 members may be present. (*Id.* at 6.) Plaintiff fears that if he comes into contact with former
 5 gang members at his parole agent's office, they will take this opportunity to injure him because
 6 he debriefed and provided information about his former gang to the authorities. (*Id.* at 5, 6.)
 7 Plaintiff alleges that Defendant has offered no form of protection from active gang members that
 8 "could" be at the parole agent's office. (Compl. at 6.) Nowhere in his complaint does Plaintiff
 9 allege that Defendant Woodford knew of his fear that if he were to come into contact with former
 10 gang members, he would be injured. (Compl.) Further, Plaintiff does not allege how Defendant
 11 Woodford disregarded this potential risk, if in fact he made it known to her. (*Id.*)

12 13 ARGUMENT

14 **I. Plaintiff's Complaint Against Defendant Is Properly Dismissed Because He Has** 15 **Failed to Show That She Was Deliberately Indifferent to Plaintiff's Safety.**

16 **A. Dismissal Is Proper Because Plaintiff Has Failed Allege How Defendant** 17 **Personally Deprived Him of His Constitutional Rights.**

18 Defendant is properly dismissed from this action because Plaintiff has failed to alleged
 19 specific actions by Defendant that were deliberately indifferent to his safety and deprived him of
 20 his constitutional protections. The standard used to evaluate a motion to dismiss is a liberal one,
 21 particularly when the action has been filed pro se. *Estelle v. Gamble*, 429 U.S. 97 (1976).
 22 However, a liberal interpretation of a civil rights complaint may not supply essential elements of
 23 the claim that were not initially pled. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266,
 24 268 (9th Cir. 1982). Vague and conclusory allegations of official participation in civil-rights
 25 violations are insufficient to withstand a motion to dismiss. *Id.* A plaintiff's obligation to
 26 provide the grounds of his entitlement to relief requires more than labels and conclusions, and a
 27 formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp. v.*
 28 *Twombly*, ___ U.S. ___, 127 S.Ct. 1955, 1964-65 (2006). Factual allegations must be enough to
 raise a right to relief above the speculative level. *Id.* Because Plaintiff has alleged nothing more

1 than vague allegations against Defendant that do not arise above mere speculation, she should be
2 dismissed.

3 Plaintiff has failed to allege a causal connection between Defendant and his allegation of
4 deliberate indifference to his safety. To state a § 1983 claim, the plaintiff must allege facts
5 showing that a person acting under color of state law deprived the plaintiff of a right, privilege,
6 or immunity secured by the Constitution. *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624
7 (9th Cir. 1988). A person subjects another to the deprivation of a constitutional right if he does
8 an affirmative act, participates in another's affirmative act, or omits to perform an act that he is
9 legally required to do and causes the deprivation of which the complaint is made. *Johnson v.*
10 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Thus, to state a claim under § 1983, Plaintiff must
11 allege that each defendant committed some act, or failed to act in some way, that caused
12 Plaintiff's alleged injury. *See Williams v. Bennett*, 689 F.2d 1370, 1384 (11th Cir. 1982). The
13 inquiry into causation must be individualized and focus on the duties and responsibilities of each
14 individual defendant whose acts or omissions are alleged to have caused a constitutional
15 deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). A plaintiff must establish the
16 personal involvement of each defendant in the alleged constitutional deprivation or a "causal
17 connection" between each defendant's wrongful conduct and the deprivation. *Hansen v. Black*,
18 885 F. 2d 642, 646 (9th Cir. 1978). Plaintiff has failed to show how Defendant was personally
19 involved in his alleged deprivation.

20 Similarly, Plaintiff has failed to show how Defendant was deliberately indifferent to his
21 safety. In his complaint, Plaintiff failed to state any factual basis for his allegations against
22 Defendant. (Compl.) Instead, he makes vague and conclusory allegations against her, all based
23 on the employment position she held at the time of the alleged events. (*Id.* at 3, 4, 6, 7.)
24 Nowhere does he state how Defendant was aware of a known risk and disregarded that risk to his
25 detriment. In *Ivey*, plaintiff alleged that defendants had acted illegally by providing large
26 amounts of money to the university and that this led to the university becoming racially
27 segregated as a result. *Ivey*, 673 F. 2d at 268. The court found that plaintiff's allegations were
28 not supported by a direct reference to any specific actions, practices, or policies of defendants.

1 *Id.* The court dismissed the complaint for failure to state a claim because there was no
 2 connection between the defendants and the alleged discrimination. *Id.* Similarly, Plaintiff's
 3 allegations are not supported by an direct reference to any specific actions, practices, or policies
 4 of Defendant, that may sustain his claim against her. More is required and cannot establish
 5 liability or withstand a motion to dismiss.

6 **B. Plaintiff May Not Hold Defendant Liable under a Theory of Vicarious**
 7 **Liability.**

8 Defendants whose personal involvement is not alleged cannot be held liable for the acts of
 9 their subordinates under a theory of respondeat superior or vicarious liability. *Milton v. Nelson*,
 10 527 F.2d 1158, 1159 (9th Cir. 1976). Vicarious liability on the part of a supervisory official is
 11 not recognized as a basis for liability under the Civil Rights Act. *Palmer v. Sanderson*, 9 F.3d
 12 1433, 1438 (9th Cir. 1993). A supervisor is liable only when he or she has directly participated
 13 in or proximately caused the alleged deprivation. *Id.* at 1437-38. The law is clear that liability of
 14 supervisory personnel must be based on more than merely the right to control others. *Monell v.*
 15 *Dep't of Soc. Servs.*, 436 U.S. 658, 694, n. 58 (1978). Because Plaintiff's allegations are based
 16 on the position she held, and not her personal acts, she is properly dismissed.

17
 18 **II. Defendant is Entitled to Qualified Immunity Because No Reasonable Officer**
 19 **Would Have Known that Plaintiff's Constitutional Rights Had Been Violated.**

20 Qualified immunity shields an official from civil-damages liability unless his conduct
 21 violated clearly established law, of which a reasonable official would have known. *Harlow v.*
 22 *Fitzgerald*, 457 U.S. 800, 818 (1982). Thus, it gives officials "ample room for mistaken
 23 judgments by protecting all but the plainly incompetent or those who knowingly violate the law."
 24 *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (internal quotes and citation omitted).
 25 Constitutional requirements are not always clear-cut at the time that action is required by
 26 officials. *Saucier v. Katz*, 533 U.S. 194, 205-06 (2001). But qualified immunity ensures that
 27 officials are on notice that their conduct is unlawful before they are subjected to suit. *Id.* It
 28 therefore prevents officials from being distracted from their governmental duties or inhibited

1 from taking necessary discretionary action. *Harlow*, 457 U.S. at 816. It also prevents
2 “deterrence of able people from public service.” *Id.* And in reference to prisons, it allows
3 officials to utilize their expertise—based on years of observation and practice—to maintain order
4 without fear of liability for doing what seemed “reasonable” at the time. *See Jeffers v. Gomez*,
5 267 F.3d 895, 917 (9th Cir. 2001).

6 In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court set forth a particular sequence
7 of questions to be considered in determining whether qualified immunity exists. A court must
8 first consider this threshold question: “Taken in the light most favorable to the party asserting the
9 injury, do the facts alleged show the officer’s conduct violated a constitutional right?” *Id.* at 201.
10 If no constitutional right was violated, the inquiry ends and defendants prevail. *Id.* at 204. If,
11 however, “a violation could be made out on a favorable view of the parties’ submissions, the
12 next, sequential step is to ask whether the right was clearly established.” *Id.* at 201-02. “The
13 contours of the right must be sufficiently clear that a reasonable official would understand that
14 what he is doing violates that right.” *Id.* The Supreme Court also held that the goal of qualified
15 immunity would be undermined if a court denied summary judgment each time a material issue
16 of fact remains on a claim. *Saucier*, 533 U.S. at 202.

17 As detailed above, the evidence does not show that Defendant violated Plaintiff’s
18 constitutional rights. However, if the Court were to find such a violation, Defendant would still
19 be entitled to qualified immunity. Defendant would not have known that a constitutional
20 violation would result by simply requiring Plaintiff to report to his parole officer, as so many
21 other parolees are required to do. Moreover, at the time of Plaintiff’s allegations, he was
22 incarcerated, not on parole, and could cite no specific parole terms that may subject him to
23 danger. Thus, a reasonable officer could believe that Defendant was not violating Plaintiff’s
24 constitutional rights. Accordingly, Defendant is entitled to qualified immunity.

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CONCLUSION

For the reasons stated above, Plaintiff has failed to show that Defendant personally deprived him of his constitutional rights. Accordingly, his complaint against Defendant should be dismissed.

Dated: May 28, 2008

Respectfully submitted,

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